



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 08-06163
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esquire, Department Counsel
For Applicant: *Pro Se*

November 20, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on April 4, 2006, as part of her employment with a defense contractor. On June 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns about financial considerations under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006. Applicant acknowledged receipt of the SOR on June 11, 2009.

Applicant answered the SOR in writing on June 30, 2009. She admitted 15 and denied two of the Guideline F allegations with explanation, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 17, 2009, and the case was assigned to me on July 24, 2009. DOHA issued a Notice of Hearing on August 13, 2009, for a hearing on September 1, 2009. Applicant signed for

the Notice of Hearing on August 19, 2009. I convened the hearing as scheduled. The government offered five exhibits, marked Government Exhibits (Gov. Ex.) 1 through 5, which were received without objection. Applicant testified on her behalf. She offered 16 exhibits, marked Applicant Exhibits (App. Ex.) A through O which were received without objection. The record was left open for Applicant to submit additional documents. Applicant timely submitted 14 additional documents, marked App. Ex. P through CC, were received without objection (Gov. Ex. 6, Department counsel letter, dated September 29, 2009). All of the post-hearing documents had previously been admitted during the hearing, and there are no additional or new documents. DOHA received the transcript of the hearing (Tr.) on September 8, 2009. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Issues

Applicant signed for the Notice of Hearing on August 19, 2009. Applicant is entitled to 15 days notice of hearing (Directive E3.1.8). Applicant discussed with Department Counsel the hearing date of September 1, 2009, prior to the mailing of a Notice of Hearing. Accordingly, actual notice was given more than 15 days prior to the hearing. However, Applicant signed for the Notice of Hearing only 14 days prior to the hearing. She waived the 15 days notice requirement (Tr. 6-7).

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 26 year old and has been an administrative assistant for a defense contractor for over four years. She has been attending college part time and is nearing award of a degree. She is single with no children. As a student, Applicant was employed during the school year in the school athletic department and worked during the summers in a store. She has been continuously employed full time since August 2004 except for the months of May, June, and July 2005. She is active in her church. Her pastor and his wife live with her (Tr. 32-33; Gov. Ex. 1, e-QIP, dated April 4, 2006).

In a personal financial statement completed in response to interrogatories from security adjudicators, Applicant notes that she had a monthly negative net remainder in funds of approximately \$30 (SOR 1.q; Gov. ex. 2, Answers to Interrogatories, undated at 11). Applicant has since received an increase in pay from her employer. Her monthly income is now \$3,030, with monthly expenses of \$2,980, leaving a net remainder each month of \$50. Applicant stated she can cover monthly expenses. She developed a budget which shows that she is meeting her present expenses (App. Ex F, Budget, undated). However, her budget includes payments of \$50 monthly for only one delinquent student loan (Tr. 49-63). Applicant presented an outline of the action she has or will be taking concerning her delinquent debt (App. Ex. A, Applicant's actions, dated August 27, 2009). She is meeting her tuition payments, utilities, rent, car payment, and

other expenses (See, App. Ex. G, H, I, J, K, L, receipts and account statements, various dates). Applicant also has a recurring loan each month with a pay day loan company. She receives \$300 each month but repays the loan with a fee of \$45 (Tr. 24-31; App. Ex. M, Receipts dated August 7, 2009)

Credit reports and Applicant's admissions show the following delinquent debts: a student loan in collection for \$987 (SOR 1.a); a delinquent medical debt for \$139 (SOR 1.b); a student loan in collection for \$2,137 (SOR 1.c); a utility debt in collection for \$186 (SOR 1.d); a student loan in collection for \$2,270 (SOR 1.e); a telephone debt charged off for \$188 (SOR 1.f); a collection account for the purchase of a desk top computer for \$2,356 (SOR 1.g); an electronics store debt in collection for the purchase of a computer for \$2,749 (SOR 1.h); a student loan in collection for \$15,000 (SOR 1.i); a student loan to the same creditor in collection for \$3,678 (SOR 1.j); a student loan charged off for \$5,458 (SOR 1.k); a telephone account in collection for \$1,137 (SOR 1.l), a student loan delinquent for than 120 days for \$399 (SOR 1.m); a department store account past due more than 120 days for \$63 (SOR 1.n); a telephone account in collection for \$1,138 (SOR 1.o); and a utility debt charged off for \$197 (SOR 1.p). The SOR also alleges that Applicant's personal financial statement shows a negative net monthly remainder (SOR 1.q; Gov. Ex. 2, Answers to Interrogatories, undated; Gov. Ex. 3, Credit report, dated July 28, 2006; Gov. Ex. 4 Credit report, dated October 3, 2008; and Gov. Ex. 5 Credit report, dated May 9, 2009). The delinquent debts listed total \$38,815, of which \$29,929 is for student loans.

The delinquent debt at SOR 1.a, is for a student loan to a local college not included in any other student loan account. Applicant intends to pay the debt but she has not contacted the creditor, made any payments, or made any arrangements for payment (Tr. 63-64).

The delinquent debt at SOR 1.b is a medical debt for a doctor. Applicant forgot she owed the debt and has not contacted the creditor or made any arrangements for payment (Tr. 64-65).

The delinquent debt at SOR 1.c is a student loan. Applicant has an agreement with the collection agency to pay \$50 monthly on the account. Her tax refund has also been applied to her student loan debt (Tr. 65-66; App. Ex. N, Letter, dated August 13, 2009; App. Ex. O, Letter, dated February 20, 2009).

The delinquent debt at SOR 1.d is for an utility bill incurred by Applicant in approximately 2005. Applicant has not contacted the creditor or taken any other action to pay this debt (Tr. 66).

The delinquent debt at SOR 1.e is a student loan. Applicant believes this student loan is part of the student loans listed in SOR 1.i and 1.j since they are to the same creditor and collection agency. I find that this debt is included in the student loan delinquent debts set forth in SOR allegations 1.i or 1.j. No action has been taken to contact the creditor, to pay the debt, or make payment arrangements (Tr. 66-68).

The delinquent debt at SOR 1.f is for a telephone bill. Applicant has not taken any action to pay this debt (Tr. 67).

The delinquent debt at SOR 1.g is for the purchase of a desk top computer in 2002. The delinquent debt at SOR 1.h is for the purchase of a laptop computer in 2004. Applicant did not make any payments toward her purchase of the desk top computer. She sold the desk top in 2004 but did not use any of the proceeds of the sale to make payments on the computer. Applicant believes she made a \$100 payment towards the laptop computer when it was purchased. Her arrangement with the store was for a \$50 monthly payment until the debt was satisfied. Applicant made only one \$50 payment. Both computers were purchased to assist Applicant with her school studies (Tr. 38-42, 67-68).

The delinquent debts at SOR 1.i, 1.j, and 1.k are student loans. The delinquent debt at SOR 1.m is a past due amount on the student loan debt listed at SOR 1.k. Applicant has not made any payments on these debts. She intends to contact the creditors and make payment arrangements (Tr. 68-69).

The delinquent debt at SOR 1.l is a telephone debt and is also listed at SOR 1.o as a collection account. Applicant had phone service but exceeded the authorized minutes incurring a large debt. Applicant has not made any payments on this debt (Tr. 69-71).

The delinquent debt listed at SOR 1.n is for a department store. Applicant has not made any payment towards this account (Tr. 71).

The delinquent debt at SOR 1.p is for service from a utility company when she resided in another state. The debt has not been paid.

The financial allegation at SOR 1.q is that the previous personal financial statement noted that Applicant had a negative net remainder each month of approximately \$30 (Tr. 72).

Applicant's supervisor noted that she is an intelligent and motivated person who is capable of completing multiple tasks. She has an excellent positive character with excellent work ethic (App. Ex. B, Letter, dated August 27, 2009). Applicant's pastor and his wife wrote that they have known Applicant for over eight years. She is a mature and dependable person who displays a high degree of integrity and ambition. She is a faithful member of their church community and assists with various administrative tasks (App. Ex. C, Letter, dated August 27, 2009). Another member of the church community wrote that she has known Applicant for over eight years. She states that Applicant is a mature, responsible, dependable, and compassionate person (App. Ex. D, Letter, dated August 27, 2009). Applicant's performance evaluation for her first year with the defense contractor is rated significantly exceeds requirements (App. Ex. E, Evaluation, dated February 12, 2009).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations:

Under financial considerations, failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of

judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts as listed on credit reports and admitted by Applicant are a security concern raising Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). Most of Applicant's delinquent debts are for student loans. However, she has not made any plans or taken any action to pay any of her delinquent debts except for one small payment of \$50 a month on one student loan.

I considered the Financial Considerations Mitigating Conditions (FC MC) raised by Applicant's testimony concerning the delinquent debts. I find that none of the mitigating conditions apply to the circumstances of Applicant finances. FC MC AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment), and FC MC ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances) do not apply. The unpaid debts are considered current debts. Applicant has not made any payment plans or payments for the debts and she still owes them. Applicant presented no reason or unusual circumstances that prevented her from paying her delinquent debts when they arose. She has worked continually since August 2004 except for a short three month period. Even while attending school, she worked during the school year and in the summer. Applicant has not established that her financial problems were incurred under conditions beyond her control. She has not demonstrated responsible actions under the circumstances such as by contacting creditors, establishing payment plans, and paying some of the debts.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and

adherence to duty or obligation. Evidence of past irresponsibility is not mitigated by payment of debt only under pressure of qualifying for a security clearance. Applicant has not established payment plans for her debts or made reasonable, prudent attempts to pay her debts. She does not have a systematic, concrete method of managing her delinquent finances. She has not shown a reasonable, prudent, honest course of action in regard to her finances. Accordingly, she has not established a good faith effort to resolve debt. Applicant has not mitigated security concerns based on her finances.

Whole Person Analysis

Under the whole person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's good reputation, as noted by letters of recommendation from her supervisor, pastor, and friend. She has a good reputation in the community for trustworthiness, professionalism, and reliability.

Applicant must establish a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. She is not required, as a matter of law, to establish that she paid off each and every debt listed in the SOR. All that is required is that she has a plan to resolve her financial problems and takes significant action to implement that plan. The entirety of her financial situation and her actions can reasonably be considered in evaluating the extent to which her actions to reduce her outstanding indebtedness is credible and realistic. Available, reliable information about the person's behavior, past and present, favorable and unfavorable, should be considered in reaching a determination. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time.

Applicant has not established a meaningful track record of debt payment. She has not presented a concrete systematic plan for resolving her debt problems. She has no payment plans in place, and no methods of saving to pay debts. She has monthly income to not only meet her present obligations, but to make some additional payments on delinquent debts. Also of concern is Applicant's reliance on a recurring pay day loan each month to meet her financial needs. Even though she pays this loan each month, she incurs a fee that could better be used to resolve debts. Applicant's management of her finances and past obligations indicates she will not be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me with questions or doubts as to Applicant's judgment, reliability, and trustworthiness. She has not established that she is suitable for a security clearance. I conclude Appellant has not mitigated the security concerns arising from her financial situation.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant (Duplicate of 1.i or 1.j)
Subparagraphs 1.f - 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant (Duplicate of 1.k)
Subparagraphs 1.n - 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant

Conclusions

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge